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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 17 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a biology instructor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's decision. Ultimately, the proposed benefits of the petitioner's work are purely local. Moreover, counsel has repeatedly referenced a shortage of science teachers in the United States but the record is absent any evidence or explanation as to why the alien employment certification process, a process designed to remedy shortages, would not serve the national interest in this matter. Thus, the petitioner has provided no basis for a waiver of that process.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. from Louisiana State University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established

that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

At the outset it is necessary to address the claimed existence of a shortage of science teachers. Initially, counsel asserted that while such a shortage exists, it does not serve as the basis for requesting a waiver of the alien employment certification process. Nevertheless, throughout the proceeding, counsel has repeatedly discussed this shortage and submitted evidence purporting to document the shortage. *NYSDOT*, 22 I&N Dec. at 220-21, however, specifically rejects the proposition that a waiver of the alien employment certification process can be based on a shortage. *NYSDOT*, 22 I&N Dec. at 220-21 states:

> [The] assertion of a labor shortage, therefore, should be tested through the labor certification process. . . . The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

Id.

The petitioner has never explained why, if the alleged shortage exists, the alien employment certification process would not serve the national interest in this matter. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the alien employment certification process. *Id.* at 223.

We concur with the director that the petitioner works in an area of intrinsic merit, biology education. The director then concluded that the proposed benefits of his work, improved biology education, would not be national in scope. Counsel and the petitioner have asserted that, as an instructor at a school for gifted students, the petitioner's students will go on to spread the benefits of the petitioner's work. The petitioner has submitted evidence of the success of his students and former students at science fair competitions. On appeal, counsel cites unpublished decisions by this office. One of these decisions predates *NYSDOT,* 22 I&N Dec. at 215, and the most recent decision is for a musician for whom the late Steve Allen prepared a strong letter of support. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In addressing this issue, *NYSDOT,* 22 I&N Dec. at 217, n.3 provided the following examples of occupations that would not have benefits that are national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. It is clear from this language that the impact of a single teacher at one school is negligible at the national level. The record contains no evidence that the petitioner will create curriculum that could influence the teaching of science at the national level or comparable evidence of his potential national impact in the field of science education. Thus, we concur with the director that the petitioner has not demonstrated that the proposed benefits would be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The petitioner submitted evidence regarding the importance of advanced placement (AP) biology instruction in general. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Initially, the petitioner provided the College Board AP results in Biology for the school where the petitioner teaches, the Alabama School of Mathematics and Science (ASMS) where the petitioner currently teaches. These results reflect that 77 percent of the school's nine students who took the AP Biology test scored in the highest quarter, compared with 25 percent globally. We cannot ignore, however, that ASMS' student population is not comparable to the global population as ASMS does not have open admission.

The record also contains a June 14, 2006 memorandum from the President of ASMS advising that the percentage of ASMS students scoring three or above on an AP examination had risen from 45 percent to 67 percent. This increase in scores, even if attributable to the petitioner, would not demonstrate his influence in the field. The petitioner also submitted July 2008 email messages posted on an AP Biology online message board from biology teachers whose students did not score as expected on the AP Biology exam. These anecdotal comments from teachers whose students didn't score as expected do not reflect on the petitioner's influence in the field.

The petitioner also submitted several letters from current and past students as well as his students' science projects and awards they have won at various science fairs. Some of the science fairs also recognize the teacher who mentored the winning students. In addition, [redacted], Central [redacted], confirms that the petitioner brought student teams to this competition and that his teams always did well. The record includes several awards from this competition from 2002 through 2004. The fact that the petitioner's current and past students are or were motivated by the petitioner, however, does not demonstrate that he

has a track record of success with some degree of influence on the field of science education. The work of his students, while not unrelated to his skill as a teacher, is primarily the students' work and does not establish the petitioner's influence on other science educators.

The record reflects that the petitioner is the project director of "A Tale of Two Watersheds: People, Bacteria, and Environmental Quality." Toyota and the National Science Teachers Association (NSTA) funded this project with a Toyota Tapestry Grant. A promotional article about the grant on ASMS' website indicates that [redacted] was the principal writer for the grant. In this project, the school's students examined the conditions of two streams, one of which is surrounded by a city and the other of which is forested. [redacted] Assistant Director for Corporate Partnerships for NSTA and Manager of the Toyota Tapestry Grants, asserts that the petitioner's watershed project was successful and made a positive impact on his school and community. Mr. [redacted] continues that the petitioner's project "was publicized locally and nationally and details on his grant project are available to NSTA members throughout the country." While this project benefited the petitioner's students, school and community, this grant does not reflect on the petitioner's impact or influence in the field of science education. We reiterate that while the petitioner directed the project, he was not the principal writer on the grant. Regardless, the mere availability of this grant for review by NSTA members is not evidence of its ultimate influence on NSTA members. The record does not reflect that this project has served as a template for science projects nationwide or that the petitioner serves as a national mentor or guide in obtaining such grants.

The petitioner also submitted letters from graduate students in Louisiana and Alabama attesting to the petitioner's informal assistance with their dissertations. These letters, while affirming the petitioner's generosity and dedication to education, do not establish his influence on science education nationally.

The petitioner submitted his 2002 favorable evaluation from the Arkansas School for Mathematics and Sciences where he previously worked. Once again, while this evaluation establishes his skill at teaching, it does not demonstrate his influence in the field of science education. In addition, the petitioner submitted "A Teaching Kit for a Process of Photosynthesis." While an attached adhesive note indicates that this kit has been available on the Internet for years, the petitioner submitted no evidence that this kit is in use nationwide or has otherwise impacted the field of science education. Not every document available on the Internet can be presumed to have influenced a field.

Dr. [redacted] Senior Deputy Director of Curriculum and Research Services at the Kenya Institute of Education, confirms that the petitioner was a panel member of the Kenya Institute of Education national biology panel between 1984 and 1989. This service included developing the secondary education biology curriculum, providing orientation for teachers on the new curriculum and developing support materials for the curriculum. The petitioner, however, does not indicate that he will be participating in a national panel on biology curriculum in the United States. Thus, while his past service on such a panel in Kenya is notable, it does not demonstrate his future potential for a national impact in the United States.

In response to the director's request for additional evidence, the petitioner submitted an August 13, 2008 email from [redacted] at the University of Alabama inviting the petitioner to participate in the AP ITP Biology team. This invitation postdates the filing of the petition and cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Regardless, it cannot demonstrate the petitioner's impact or influence outside of Alabama. Similarly, on appeal the petitioner submits evidence that he has submitted a paper on student understanding of photosynthesis, evidence that also postdates the filing of the petition and cannot be considered. *Id.* Regardless, mere authorship of a published paper does not demonstrate its influence in the field without additional evidence, such as citations of that paper.

[redacted], Secretary of the Arkansas School for Mathematics, Sciences and the Arts Faculty Senate, advises that the Faculty Senate approved a resolution that the petitioner is a valuable education who has made a significant contribution to the education of the school's students and Arkansas' students and moved to encourage the administration to act in support of the petitioner's efforts to secure permanent residence in the United States. This resolution does not explain why the alien employment certification process is inapplicable or demonstrate the petitioner's influence in science education beyond the school where he taught.

In an April 15, 2005 letter, Dr. [redacted] Dean of Academic Affairs at the Arkansas School for Mathematics, Sciences and the Arts asserts that the petitioner was a valued member of the faculty at that school where he taught several biology courses, including AP Biology and AP Environmental Science. Dr. [redacted] further confirms that the petitioner served as a research mentor for approximately 10 students whose projects are biological in nature. Dr. [redacted] notes the success of the petitioner's students at competitions and on AP exams. Dr. [redacted] does not explain how the petitioner has influenced the field of science education as a whole. The petitioner no longer works at this school.

Dr. [redacted], Science Department Chair at the Arkansas School for Mathematics, Sciences and the Arts, praises the petitioner's skill and asserts that the petitioner's students have won more prizes at state-level science fairs and qualified for more international science fairs than the students of any other teacher. Dr. [redacted] does not explain how this success has influenced the field of science education as a whole or explain why the alien employment certification process would not serve the school where the petitioner currently works.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter*

of Caron International, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of skill without specifically identifying innovations and providing specific examples of how those innovations have influenced the field. Merely repeating the language of the legal requirements does not satisfy the petitioner's burden of proof.[1] The letters are from the petitioner's immediate circle of colleagues, former fellow students and current and past students rather than from independent science educators who can explain the petitioner's influence in science education as a whole. The documentary evidence merely establishes the petitioner's local impact as a successful teacher.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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[1] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).